

1 **LEGAL ARGUMENT**
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3 **I. REJECTIONS UNDER 35 U.S.C. 112**

4
5 Claims 5, 9, 11-13, 16 and 21-23 are pending.
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7 The Examiner objects to the drawings based upon the argument that the raised edges that are
8 releaseably engaged with each other as set forth in Claim 23 and the raised serrated edges of Claim 9
9 must be shown or the features cancelled from the claims. The Examiner argues that “newly submitted
10 Fig. 9 is considered new matter.”

11 The Examiner contends that because the serrations extend longitudinally and transversely along
12 the length and width of the raised edges respectively, that is new matter, because the direction that the
13 serrations extend was not disclosed in the original specification. Moreover, the Examiner contends
14 that views of Fig. 9 disclose the number, size and shape of the serrations and that lower depth
15 serrations can be combined with larger depth serrations, none of which was disclosed in the original
16 application.

17 The applicant respectfully transverses this objection. The Examiner’s attention is directed to
18 the original patent application at Page 12 thereof in which the following appears:

19 “In the preferred embodiment, the raised exterior edges of the overlapping exterior edges,
20 where applicable, can have a releasable engagement system and can be comprised of guide slots that
21 engage and capture guide ribs formed on the adjacent raised external edge so that the two raised
22 exterior edges slide together in an interlocking fashion with respect to each other. As part of the
23 interlocking or releasable engagement system, one of [t]he raised exterior edges may have serrated
24 teeth so that overall, the organizer will be incremental rigid with respect to the interlocking elements.”

1 Moreover, in original claim 9, the organizer has at least one (1) serrated edge “that
2 releasably engages the other of said adjacent elements.”

3 Thus, the combination of the disclosure and the claims clearly teach serrated teeth which
4 releasably engage adjacent elements. If the Examiner’s argument is that it is the bidirectional nature of
5 the serrated teeth, and not the presence of serrated teeth themselves, which creates the new matter
6 rejection, applicant argues that it is obvious that interlocking edges may be bi-directionally secured by
7 serrated teeth. In short, the original disclosure clearly creates an implication of the bi-directional
8 nature of the serrated edges as reflected in Fig. 9.

9 The Examiner well knows that a claim limitation does not need to be recited word for word if
10 one of skill in the art would recognize upon reading the specification, that the language reflects what
11 the specification shows has been invented.

12 See *All Dental Prodx, LLC v. Advantage Dental Products, Inc.*, 309 F.3d 774, 64 U.S.P.Q.2d
13 (BNA) 1945 (Fed. Cir. 2002). See also *Eiselstein v. Frank*, 52 F.3d 1035, 1038, 34 U.S.P.Q.2d
14 (BNA) 1467, 1470 (Fed. Cir. 1995) (citing *Vas-Cath Inc. v Mahurkar*, 935 F.2d 1555, 1562, 19
15 U.S.P.Q.2d (BNA) 1111, 1115 (Fed. Cir. 1991), and *Application of Wertheim*, 541 F.2d 257, 265, 191
16 U.S.P.Q. (BNA) 90, 98 (C.C.P.A. 1976).

17 Thus, it is not required that there be identity between the language and/or drawings of the
18 original application and that which is inserted through amendment (s). If the clear understanding,
19 intention and concept are present in the specifications and/or claims, that should be sufficient to avoid
20 a “new matter” rejection. For example, if at every instance in the specification and drawings an
21 element is described which is curved, but a patent Examiner cites a reference that shows a flat element,
22 the applicant could overcome the rejection by adding the words “such that the element is not flat” in
23 the claim. Although these words are not found in the specification, the amendment of the claim would

1 not constitute new matter, because the amendment really reflects what the specification shows has
2 been invented. See, All Dental Prodx, LLC v. Advantage Dental Products, Inc., 309 F. 3d. 774, 64
3 U.S.P.Q. 2nd BNA 1945 (Fed. Cir. 2002).

4 The Examiner alleges that claims 21, 22 and claims dependent thereupon have no support in the
5 original disclosure and that the limitations claimed therein constitute new matter. The Examiner says
6 that the limitations in claims 21 and 22 may read over the Rosenberg reference and the Wilk reference
7 “since the bottom surfaces of these references are formed as a horizontal panel that meets the side wall
8 or raised edge.” The Examiner goes on to say that the raised edges of the references do not fully
9 define a bottom surface, but rather partially define the bottom surface by defining an edge of the
10 bottom surface. We respectfully traverse that notion.

11 The Examiner’s attention is directed to Fig. 4 and the expandable wings 40 and 52. The first
12 thing that is obvious is that there are fixed sides that meet each other. They are referred to in the
13 specification as “raised edges”, but it is obvious that they mean the sides of the “wing” which are
14 perpendicular to the bottom surface that is formed within the area bounded by the fixed sides. Thus,
15 when the claim recites that the “raised edges” (otherwise the sides which rise perpendicularly above
16 the bottom surface) defining a bottom surface and two (2) substantially flat edges that are in the plane
17 of the bottom surface, it is clear that we have perfectly described wings 40 and 52. The applicant is at
18 a loss to understand the dilemma that confronts the Examiner in understanding the language which
19 these claims define and which is clearly supported by the figures that were originally incorporated in
20 the application.

21 Claim 21 also speaks of a second element which comprises three (3) raised edges defining the
22 bottom surface and one (1) substantially flat fourth edge, in the plane of the bottom surface. That is
23 clearly seen in Fig. 8 and is marked 28. Again, how can this be new matter when it perfectly describes

1 Fig. 8? The same arguments are made with regard to claim 22 and all of the claims dependent
2 therefrom.

3 Frankly, the applicant is confused when the Examiner references the Wilk patent and says there
4 is a “bottom surface formed as a horizontal panel that meets the side wall or raised edge”. Wilk does
5 not describe a bottom surface. As I pointed out in my previous office action response, (Page 9, Lines
6 1-5), the Wilk assembly creates an interior void where it would be physically and geometrically
7 impossible to have fixed dividers and a floor present. Wilk’s device is a collapsible receptacle
8 assembly for holding fluid and/or particulate material. The patentee teaches a macro assembly for use
9 as a temporary swimming pool or ice skating rink, and nothing more. Where is the bottom surface that
10 the Examiner claims is taught in Wilk? To suggest a bottom floor to the apparatus would result in a
11 non-movable apparatus.

12 In Rosenberg, there is a bottom surface, but Rosenberg references a mono-directional drawer
13 organizer, which only expands in one (1) direction. That the Examiner equates the bottom surfaces of
14 Rosenberg and Wilk as horizontal panels meeting sidewalls, is particularly confusing. Rosenberg and
15 Wilk are totally distinct as I applicant previously explained.

16 The Examiner claims reference to the fourth element being substantially in mirror image
17 relationship to the third element has no support in the original disclosure. The applicant invites the
18 Examiner to review Fig. 4, Items 40 and 52. Are they not in substantial mirror image relationship, as
19 they are used in the context of the invention? If a mirror were placed between Items 40 and 52 the
20 reflection on the other side would be a substantial mirror image of the other. It is true that the length of
21 Items 40 and 52 are different but that doesn’t change the fact that they are in substantial mirror image
22 relationship to each other. Those words do not appear in the specification, but in the context of the
23 case law I cited above, Fig. 4 clearly establishes that relationship and the Examiner should so find.

1 **II. REJECTIONS UNDER 34 U.S.C. 102(b)**

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3 The Examiner continues to cite Bidot as anticipating the applicant's invention. The Examiner
4 sidesteps the applicant's cogent arguments distinguishing Bidot by setting up a straw man merely to
5 knock it down: meaning the "new matter" rejection. Clearly if the Examiner spent time in analyzing
6 Bidot as applicant has done on numerous occasions, the Examiner could only conclude that applicant's
7 arguments have merit. As referenced in the previously filed Amendment and Response of applicant,
8 Bidot discloses an organizer which defines a plurality of compartments which are adjustable in size
9 and shape. The various components of the organizer are connected by clip elements. There is no first
10 element in Bidot's apparatus, wherein a plurality of substantially fixed upwardly raised dividers are
11 situated within the fixed area created by the peripheral edge and wherein the dividers are in
12 substantially fixed positions relative to one another and relative to the peripheral edge. Indeed, the
13 Bidot clip elements may be moved thereby resulting in adjustable panels, unlike those of the applicant
14 which are in a fixed configuration one to the other. Bidot teaches telescopically-arranged members
15 that can be extended out from or retracted into one another, but again in movable and releasable
16 configuration one to the other, merely requiring removal of the clip elements prior thereto.
17 Furthermore, there is no bottom surface to the apparatus; instead, the organizer uses the bottom surface
18 of the drawer as its bottom surface. This is so totally different from the apparatus disclosed by the
19 applicant, such as in Claim 21, so as to defy comprehension as to how the Examiner can cite Bidot
20 under 102(b). How can the Examiner argue that the adjustable Bidot partitions held together by clip
21 members, is in any way, shape or form equatable to the fixed dividers of the applicant's invention. As
22 we said previously, the Examiner is comparing "apples and elephants". Let's analyze Claim 21
23 closely: In the first element there are "substantially fixed upwardly raised dividers" which "are in
24 substantially fixed position relative to each other and relative to the peripheral edge" (Claim 21, Lines
25 7-13). Bidot's dividers are clipped together and are adjustable (they are not in fixed position one to the
26 other.

27 Applicant's organizer has a bottom surface formed from the first, second and third elements
28 (Claim 21, Lines 28 – 29). Where is the bottom surface of Bidot. Its clear where it is - - it's no where,
29 because there isn't a bottom surface. How can the Examiner argue that this is a 102(b) anticipation? If
30 I load the applicant's organizer with pencils and I pull it out of the drawer, the pencils go with the

1 organizer. If I tried to do that with the Bidot apparatus, the pencils would be all over the bottom of the
2 drawer or floor.

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4 **III. REJECTION UNDER 35 U.S.C. 103(a)**

5 Again, the Examiner cites Bidot, but now relies upon Rosenberg et. al.

6 Rosenberg teaches away from Bidot in that the Rosenberg references have bottom surfaces.
7 How can the Examiner argue that it would be obvious to combine the bottom surfaces of Rosenberg
8 with Bidot? That extrapolation defies credibility. Rosenberg teaches an expandable organizer
9 wherein a first element comprises a plurality of upwardly raised dividers situated within a fixed area
10 created by the peripheral edge, and which are in a fixed position relative to each other and relative to
11 the peripheral edge. That's not the case in Bidot. Applicant has already argued again and again that
12 Bidot teaches petitions which are clipped together and are adjustable. Clearly, the bottom surface
13 taught in Rosenberg would not and could not be a part of the Bidot system. It couldn't be because then
14 the clipped partition members would not be able to move and the clips would be meaningless, which
15 would defeat the entirety of the Bidot system.

16 The Examiner then relies upon Rosenberg in view of Wilk to support a 103(a) rejection.
17 Again, the references can't be combined. Wilk teaches a macro system with an internal void. It
18 cannot have a bottom surface or it could not function in the manner taught by Wilk. Wilk's device is
19 for use as a temporary swimming pool or ice skating rink. How could the fixed partitions in
20 applicant's invention form a part of the void of Wilk's rink? The answer is they could not because the
21 essence of Wilk's rink is that it expands and that capability would be absent if applicant's fixed
22 partitions were incorporated into Wilk's rink. Thus, the Examiner respectfully errs in trying to
23 combine these two references. They are uncombinable. Having said that, even if arguendo Will and
24 Rosenberg were combinable, they fail to teach the expansion capability of applicant's invention in both
25 the length and width directions. Rosenberg only teaches a mono-directional drawer organizer.

26 Notwithstanding this analysis, the Examiner argues that the ice skating rink of Wilk (see Fig. 9)
27 can expand in both length and width directions. Even if that were the case, we re-emphasis the fact
28 that the fixed partitions of Goldberg teach away from the open void of Wilk. If the two references

1 could be combined, and they cannot be, the Wilk rink would be unusable with fixed partitions within
2 the internal void. In addition, Wilk's rink is required to be "substantially liquid tight" between the first
3 box member and the second box member. That is a limitation that is not required in applicant's
4 invention. Moreover, it is safe to say that the Rosenberg references are not water tight and so those
5 teachings would lead one of ordinary skills in the art away from the Wilk teachings.

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1 **CONCLUSIONS**

2 In view of the above arguments, it is asserted that none of the amendments previously filed
3 constitute new matter and that they should be entered and that the claims are allowable over the cited
4 references, and allowance thereof is respectfully requested.

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6 Respectfully submitted,

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